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No. 89-1428

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

RICHARD E. SCHWARTZ,
Petitioner,

vs.

THE HONORABLE WILLIAM L. HUNGATE,
United States District Judge for the
Eastern District of Missouri,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
For the Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

On June 11, 1990, this Court decided *Cooter & Gell v. Hartmarx Corporation* and thereby effectively answered the questions presented in this case in a manner adverse to Petitioner Schwartz. Those questions are:

1. Did the United States Court of Appeals for the Eighth Circuit err in showing "substantial deference" to the district court's decision to impose sanctions under Fed.R.Civ.P. 11?

2. Must a district court find both improper purpose and a lack of reasonable inquiry before imposing sanctions?

3. Can a district court impose Rule 11 sanctions after an attorney has withdrawn voluntarily the offending pleading?

LIST OF PARTIES

The parties to this dispute are Petitioner Richard E. Schwartz, an attorney practicing in Missouri, and Respondent, the Honorable William L. Hungate, United States District Judge for the Eastern District of Missouri. The parties to the litigation out of which the Rule 11 sanction arose were plaintiff Michael V. Roberts, an unsuccessful candidate for the Democratic nomination for President of the Board of Aldermen of the City of St. Louis, and defendants Jerry B. Wamser, Rita M. Krapf, Walter R. Wrenn, Jr., and David A. Robbins, who were then members of the Board of Election Commissioners of the City of St. Louis. Thomas A. Villa, the successful candidate for the Democratic nomination, was a defendant/intervenor in this underlying litigation.

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RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, the Honorable William L. Hungate, United States District Judge for the Eastern District of Missouri, respectfully requests that this Court deny the Petition for Writ of Certiorari. The Petition seeks review of the judgment and opinion of the United States Court of Appeals for the Eighth Circuit affirming the imposition of sanctions under Fed.R.Civ.P. 11. The Eighth Circuit's opinion, which is unreported, appears in the Appendix to the Petition for Writ of Certiorari ("Appendix") at A-2 to A-3.

STATEMENT OF THE CASE

Petitioner Richard E. Schwartz appeared as counsel of record for the plaintiff in the matter of *Michael V. Roberts v. Jerry B. Wamser, et al.*, a case filed in the Eastern District of Missouri in 1987. Roberts was an unsuccessful candidate for the Democratic nomination for President of the Board of Aldermen of the City of St. Louis. Mr. Roberts claimed that Mr. Wamser and his fellow members of the Board of Election Commissioners of the City of St. Louis violated the Voting Rights Act by implementing a punch card voting system in City elections that rejected a disproportionate number of ballots cast by black voters.

After a bench trial, Respondent Hungate concluded that the punch card voting system as implemented in the City of St. Louis did violate § 2 of the Voting Rights Act as amended, 42 U.S.C. § 1973, and that Mr. Roberts had standing to pursue this claim. Judge Hungate concluded, however, that this violation did not result in Roberts' defeat and that Roberts therefore was not entitled to a declaration voiding the election of his primary opponent. Judge Hungate did order the Board of Election Commissioners to take certain steps in the future to ensure the counting of ballots validly cast but rejected by automated tabulating equipment. He also ordered the Board to provide appropriate voter education services to reduce the incidence of invalidated ballots. *Roberts v. Wamser,* 679 F.Supp. 1513 (E.D.Mo. 1987).[1]

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[1] By a two to one vote, a panel of the United States Court of Appeals for the Eighth Circuit reversed. *Roberts v. Wamser,* 883 F.2d 617 (8th Cir. 1989). Noting that the standing of an unsuccessful candidate under the Voting Rights Act was a question of first impression, *id.* at 620 n.11, the Eighth Circuit concluded that Roberts lacked standing under the Voting Rights Act because he was "not an aggrieved voter suing to protect his right to vote." *Id.* at 621.

Schwartz's Petition for Writ of Certiorari arises out of this litigation but is wholly collateral to it. Schwartz entered his appearance on behalf of plaintiff Roberts on March 5, 1987. On April 8, 1987, Schwartz filed on Roberts' behalf a handwritten "application for leave to appear specially." This application stated:

> Plaintiff Michael V. Roberts prays that Errol G. Mosley be granted leave to appear herein specially together with Richard E. Schwartz on behalf of said plaintiff. In support of this application your movant-plaintiff states as follows:
>
> 1. Errol G. Mosley graduated from Howard University in D.C. and thereafter served as law clerk to the Honorable Consuelo B. Marshall, United States District Judge for the Central District of California.
>
> 2. Errol G. Mosley is a member of the State Bar of California and is admitted to practice before the Supreme Court of California.
>
> 3. Errol G. Mosley also is admitted to practice before the U.S. Court of Appeals, Ninth Circuit, and the U.S. District Court for the Central District of California.
>
> 4. Errol G. Mosley is an associate with the firm O'Melveny and Meyers, Los Angeles, and is presently on sabbatical leave from that firm.
>
> WHEREFORE plaintiff Roberts prays that Errol G. Mosley be admitted specially [several words illegible].
>
> /s/ Richard E. Schwartz
> Attorney for Plaintiff Roberts

(Appendix A-5 to A-6).

On April 8, 1987, Judge Hungate granted the application and Mr. Mosely was permitted to appear pro hac vice.[2] Mr. Mosely subsequently attended a chambers conference that day concerning the *Roberts* case. On April 15, 1987, a "memorandum for clerk" signed only by Schwartz was filed. That memorandum stated:

> Comes now Errol G. Mosely and withdraws his appearance herein as co-counsel for plaintiff Michael V. Roberts. Richard E. Schwartz will continue as counsel on behalf of plaintiff Michael V. Roberts.

(Appendix A-6 to A-7). Leave for Mr. Mosely's withdrawal was granted on April 20, 1987.

There was no dispute below that Mr. Mosely was not a member of the State Bar of California, was not admitted to practice before the Supreme Court of California, was not admitted to practice before the United States Court of Appeals for the Ninth Circuit, and was not admitted to practice before the United States District Court for the Central District of California. Indeed, Mr. Mosely was apparently not licensed to practice in any jurisdiction.

On May 21, 1987, Judge Hungate entered an order directing Schwartz to show cause why sanctions under Fed.R.Civ.P. 11 should not be imposed against him. In response Schwartz filed his own affidavit and that of Mr. Mosely. In his affidavit, Schwartz said Mosley was introduced to him as a graduate of Howard University Law School and Schwartz "formed the impression at that time that Mr. Mosely was in fact a practicing attorney." (Appendix A-8). According to Schwartz, this "impression" was fortified by the quality of certain research and drafting Mosely did for Schwartz. From his conversations with

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[2] More than one spelling of Mr. Mosely's name appears in the record below. The correct spelling is apparently "Mosely."

Mosely, Schwartz "acquired the impression" that Mosely was a member of the California Bar and admitted to practice in the Central District of California and before the Ninth Circuit. *Id.* In his affidavit, Schwartz stated that he prepared the handwritten application and "verbally checked it with Mr. Mosely who voiced no dissent." *Id.* Mr. Mosely's affidavit confirmed that he was a graduate of the Howard University School of Law and related his employment history. Pointedly, it failed to note his admission to any bar. Mr. Schwartz's affidavit stated Mr. Mosely had taken, but failed to pass, the California Bar exam.

Judge Hungate denied without prejudice Schwartz's request to withdraw as counsel of record, and scheduled a hearing on the show cause order. The hearing was held on February 19, 1988. Schwartz reiterated his position that Mosely's actions gave Schwartz reason to believe that Mosely was an attorney.

Judge Hungate found that Schwartz did not submit the Mosely application for an improper purpose. The issue was "whether Mr. Schwartz conducted reasonable inquiry into the factual basis for the application." (Appendix A-13).

> Here, it is clear that Mr. Schwartz relied solely on his impressions of Mr. Mosely rather than on an independent investigation of the accuracy of those impressions. Mr. Schwartz did not ask to see Mr. Mosely's bar card and did not call any of the clerks of the relevant California courts to verify whether in fact Mr. Mosely was a licensed attorney. While Mr. Schwartz may never ask for evidence of licensing when working with other counsel, it is reasonable to seek such evidence when such counsel will be entered as attorney of record in a court proceeding. . . . While Mr. Schwartz urges he was pressed for time in light of litigation deadlines, the time needed for investigation of Mr. Mosely's status as a licensed attorney was minimal if not negligible. This was not a situation where Mr. Schwartz had to research and analyze complex legal principles or factual

> situations. Nor was this a situation where the facts were in an adversary's custody or control — thus requiring discovery proceedings to attain or verify the information. Finally, this is not a situation where counsel had to rely on his client for the accuracy of the information. Indeed, one or two phone calls would have provided Mr. Schwartz with the factual information necessary to discovery [*sic*] the application at issue here was not supportable.

(Appendix A-14 to A-15).

Judge Hungate found this lack of inquiry a violation of Fed.R.Civ.P. 11. He noted that "[o]nce a violation is found, sanctions are mandatory." (Appendix A-16, citing *O'Connell v. Champion Int'l Corp.*, 812 F.2d 393, 395 (8th Cir. 1987)). "Taking into account the circumstances surrounding the filing and withdrawal of Mr. Mosely's entry of appearance [and] noting no party contends it incurred expense(s) related to the entry of appearance," Judge Hungate imposed a monetary sanction of $1,000 "to deter similar conduct in the future." (Appendix A-16).

A panel of the United States Court of Appeals for the Eighth Circuit unanimously affirmed the imposition of sanctions in a *per curiam* opinion. The court of appeals noted that a determination by the district court that a Rule 11 violation has occurred " 'deserves substantial deference from a reviewing court.' " (Appendix A-3, quoting *O'Connell, supra,* at 395). The appellate court saw "no error of fact or law in the District Court's determination" and found no abuse of discretion in fashioning the sanction. (Appendix A-3). Schwartz petitioned for rehearing en banc, arguing that the standard of review applied by the appellate panel was inconsistent with the *de novo* standard of review applied by the Eighth Circuit in other Rule 11 cases. Schwartz's petition for rehearing was denied on October 12, 1989.

REASONS FOR DENYING THE WRIT

On June 11, 1990, the Court handed down its decision in *Cooter & Gell v. Hartmarx Corporation,* 58 U.S.L.W. 4763 (U.S. June 11, 1990). *Hartmarx* directly or indirectly addresses all the questions presented by Schwartz's Petition and rejects the positions urged by Schwartz. Therefore, this case does not warrant review by the Court.

I. *Hartmarx* Held That All Components Of A Rule 11 Determination Are Subject To An "Abuse of Discretion" Standard Of Review On Appeal And Petitioner, At A Minimum, Was Afforded That Level Of Review

Schwartz argues that the Eighth Circuit improperly applied a "substantial deference" standard of review to Judge Hungate's finding that Schwartz's conduct violated Rule 11. He maintains that *de novo* review is the proper standard and points to decisions in the Seventh and Ninth Circuits which apply this standard to certain aspects of the Rule 11 determination. Petition for Writ of Certiorari ("Petition") at 9.

It is entirely possible that the Eighth Circuit did apply a *de novo* standard of review. In addition to quoting the observation in *O'Connell v. Champion Int'l Corp.,* 812 F.2d 393, 395 (8th Cir. 1987), that a district court's finding of a Rule 11 violation " 'deserves substantial deference from a reviewing court,' " the Eighth Circuit panel concluded:

> Having carefully reviewed the record and Schwartz's arguments on appeal, we see no error of fact or law in the District Court's determination that a violation of Rule 11 occurred. Further, we cannot say that the District Court abused its discretion in fashioning the sanction.

(Appendix A-3).

As Schwartz points out, the Eighth Circuit in the past has subscribed to a three-pronged approach to review of Rule 11

sanctions: review of factual determinations under a "clearly erroneous" standard, *de novo* review of legal conclusions, and review of the sanction imposed for "abuse of discretion." *E.g., Kurkowski v. Volcker,* 819 F.2d 201, 203 n.8 (8th Cir. 1987). It is certainly not evident that the Eighth Circuit deviated from that approach here.[3] Even if the Eighth Circuit panel ignored its own Circuit precedents, *intracircuit* conflicts are not matters for review in this Court. *See Davis v. United States,* 417 U.S. 333, 340 (1974). Moreover, the thrust of Schwartz's argument is that the appellate court should have conducted a *de novo* review of the facts. Petition at 10. Even before *Hartmarx,* the federal courts of appeals uniformly rejected such exacting scrutiny of a district court's factual findings in Rule 11 cases. *See Cooter & Gell v. Hartmarx Corp.,* 58 U.S.L.W. 4763, 4767 (U.S. June 11, 1990).

Most importantly, this Court in *Hartmarx* resolved the precise *intercircuit* conflict on the appropriate standard of review urged by Schwartz in support of his Petition.[4] The Court held that all aspects of the district court's Rule 11 determination should be reviewed under the highly deferential "abuse of discretion" standard.

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[3] For other Eighth Circuit cases implicitly or explicitly applying the tripartite standard of review, see *EEOC v. Milavetz & Associates, P.A.,* 863 F.2d 613, 614 (8th Cir. 1988); *American Inmate Paralegal Assoc. v. Cline,* 859 F.2d 59, 61-62 (8th Cir.), *cert. denied,* 109 S.Ct. 565 (1988); *Hartman v. Hallmark Cards, Inc.,* 833 F.2d 117, 124 (8th Cir. 1987).

[4] Like Schwartz, the petitioner in *Cooter & Gell v. Hartmarx Corp.,* 58 U.S.L.W. 4763, 4767 (U.S. June 11, 1990), urged the Court to adopt the *de novo* standard of review articulated by the Ninth Circuit in *Zaldivar v. City of Los Angeles,* 780 F.2d 823, 828 (9th Cir. 1986). The Court noted that the Ninth Circuit was in conflict with those Circuits that "apply a deferential standard to all issues raised by a Rule 11 violation." 58 U.S.L.W. at 4767.

> Deference to the determination of courts on the front lines of litigation will enhance these courts' ability to control the litigants before them. Such deference will streamline the litigation process by freeing appellate courts from the duty of reweighing evidence and reconsidering facts already weighed and considered by the district court; it will also discourage litigants from pursuing marginal appeals, thus reducing the amount of satellite litigation.
>
> Although district courts' identification of what conduct violates Rule 11 may vary . . . some variation in the application of a standard based on reasonableness is inevitable.

Id. at 4768.

Therefore, even if the Eighth Circuit applied a "substantial deference" standard of review, the imposition of sanctions on Schwartz was afforded, at a minimum, the appropriate degree of scrutiny.[5] *Hartmarx* settled the standard of review question

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[5] As this Court has acknowledged in a variety of contexts, a "substantial deference" standard of review is merely a different verbal formulation of the "abuse of discretion" standard. In describing the "abuse of discretion" standard of review of a district court's decision to certify a judgment as final for purposes of appeal under Fed.R.Civ.P. 54(b), the Court stated that "the discretionary judgment of the district court should be given substantial deference." *Curtiss-Wright Corp. v. General Electric Co.*, 446 U.S. 1, 10 (1980).

The disposition of a forum non conveniens motion is also subject to "abuse of discretion" appellate review. In that context the Court observed:

> The *forum non conveniens* determination is committed to the sound discretion of the trial court. It may be reversed only when there has been a clear abuse of discretion; where the court has considered all relevant public and private interest factors, and where its balancing of these factors is reasonable, its decision deserves substantial deference.

Piper Aircraft Co. v. Reyno, 454 U.S. 235, 257 (1981).

and there is no cause for the Court to revisit the issue in this case.

II. The Language Of Rule 11 Refutes, And The Federal Courts Of Appeals Uniformly Reject, Petitioner's Contention That Rule 11 Sanctions Can Be Imposed Only When There Is Both Improper Purpose And Lack Of Reasonable Inquiry

Schwartz argues that Rule 11 sanctions can only be imposed when the erroneous pleading or filing is interposed for an improper purpose. In support of this proposition, Schwartz cites various cases that allegedly demonstrate that Rule 11 sanctions cannot be imposed for lack of reasonable inquiry in the absence of bad faith. Respondent submits there is in fact no support for Schwartz's contention in the wording of Rule 11 or in the case law, and certainly nothing to commend the issue for the attention of this Court.

Schwartz is correct that the Federal Rules of Civil Procedure, including Rule 11, are to be given their plain meaning. *Pavelic & Leflore v. Marvel Entertainment Group,* 110 S.Ct. 456, 458 (1989). But the plain meaning of Rule 11 is directly contrary to the interpretation Schwartz attempts to give it. By the literal terms of Rule 11, an attorney who signs a paper or pleading makes three independent certifications:

(1) that he "has read the pleading, motion or other paper;"

(2) that to the best of his "knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law *and*"

(3) "that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."

If there is no Rule 11 violation unless there is an improper purpose, the first and second certifications become superfluous. The drafters of Rule 11 obviously used the conjunctive "and" to communicate that subjective or objective "good faith" is insufficient to satisfy the "reasonable inquiry" obligation imposed by Rule 11.

The purpose of the 1983 amendments to Rule 11 was, in fact, to impose a more stringent standard than the original good-faith formula that courts read into the pre-1983 Rule 11. Advisory Committee Note to 1983 Amendments to Fed.R.Civ.P. 11, *reprinted in* 97 F.R.D. 165, 198-199 (1983). A leading commentator on Rule 11 has argued that a bad-faith requirement is inconsistent with Rule 11's text and purpose. Schwarzer, *Sanctions Under the New Federal Rule 11—A Closer Look,* 104 F.R.D. 181, 191 (1985). Judge Schwarzer refers to the reasonable inquiry into the facts and law required by Rule 11 as two of the three prongs of Rule 11.

> The first two prongs of the rule . . . are directed at the merits: in substance they are aimed at frivolous papers. The third prong is directed at papers which, though not necessarily frivolous, are found to be interposed for an improper purpose.

Id. at 195. Obviously, it does violence to the logic of Rule 11 to engraft the "improper purpose" requirement onto the obligation to make reasonable inquiry into the facts and law.[6]

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[6] Judge Schwarzer's article is cited with approval by this Court in *Cooter & Gell v. Hartmarx Corp.*, 58 U.S.L.W. 4763, 4765 (U.S. June 11, 1990). Interestingly, when Judge Schwarzer revisits Rule 11 in an article cited by Schwartz in his Petition at 10, Judge Schwarzer "does not address the prohibition against papers filed for an improper purpose." He notes that "[f]ew courts have imposed sanctions on this ground." Schwarzer, *Rule 11 Revisited,* 101 Harv.L.Rev. 1013, 1015 n.7 (1988). This observation contradicts Schwartz's suggestion that there is something anomalous about the imposition of Rule 11 sanctions in the absence of "improper purpose." Petition at 14.

Nor is there any confusion on this issue in the lower courts. It appears that every United States Court of Appeals that has addressed the issue has found the failure to conduct a reasonable inquiry under Rule 11 subject to sanctions without regard to the presence of an improper purpose.[7] Given this unanimity in the appellate courts, it is pointless to discuss the district court authority cited by Schwartz. Also, given this unanimity, it is unsurprising that the appellate case relied upon by Schwartz is inapposite. In *In re Itel Securities Litigation,* 791 F.2d 672 (9th Cir. 1986), *cert. denied,* 479 U.S. 1033 (1987), the Ninth Circuit observed that a finding of bad faith is a "prerequisite to assessment of attorneys' fees *under the court's inherent power.*" *Id.* at 674 (emphasis added). The Ninth Circuit was speaking of a district court's "inherent power to award attorneys' fees as a means of protecting the integrity of the judicial process." *Id. In re Itel Securities Litigation* does not stand for the proposition that bad faith is a prerequisite to the imposition of sanctions under Rule 11.

Finally, *Hartmarx* itself belies Schwartz's argument. Sanctions were imposed in that case because the plaintiff's "prefiling

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[7] These cases identify "improper purpose" and a lack of "reasonable inquiry" as distinct grounds for Rule 11 sanctions. *See Monument Builders v. American Cemetery Ass'n,* 891 F.2d 1473, 1484-85 (10th Cir. 1989), *cert. denied,* 110 S.Ct. 2168 (1990); *Thomas v. Evans,* 880 F.2d 1235, 1239-44 (11th Cir. 1989); *Muthig v. Brant Point Nantucket, Inc.,* 838 F.2d 600, 604-05 (1st Cir. 1988) (construing the "reasonable inquiry" requirement without regard to improper purpose); *Brown v. Federation of State Medical Bds.,* 830 F.2d 1429, 1435-36 (7th Cir. 1987); *Greenberg v. Sala,* 822 F.2d 882, 885 (9th Cir. 1987); *Robinson v. National Cash Register Co.,* 808 F.2d 1119, 1130 (5th Cir. 1987) ("violation of only one of the two clauses in rule 11 is sufficient for a district court to impose sanctions"); *Westmoreland v. CBS, Inc.,* 770 F.2d 1168, 1177 (D.C. Cir. 1985); *Eastway Const. Corp. v. New York,* 762 F.2d 243, 253-54 (2d Cir. 1985). *See also Century Products, Inc. v. Sutter,* 837 F.2d 247, 253 (6th Cir. 1988) (Nelson, J., concurring) ("Rule 11 does not prohibit an attorney from signing a motion that has a proper purpose if the attorney reasonably believes the motion 'is warranted by existing law. . . .' ").

inquiry was grossly inadequate." 58 U.S.L.W. at 4764. There was no suggestion that the complaint was filed for an improper purpose. Indeed, the district court in *Hartmarx* relied on the articulation of the Rule 11 standard set forth in *Westmoreland v. CBS, Inc.*, 770 F.2d 1168, 1177 (D.C. Cir. 1985), which, as noted in footnote 7 *supra*, identified lack of reasonable inquiry as a distinct ground for sanctions, regardless of the good faith of those who file the pleading. *See Danik, Inc. v. Hartmarx Corp.*, 120 F.R.D. 439, 440 (D.D.C. 1988), *aff'd*, 875 F.2d 890, 895-96 (D.C. Cir. 1989), *aff'd in relevant part*, 58 U.S.L.W. 4763 (U.S. June 11, 1990). In sum, there is no confusion about the independence of the "reasonable inquiry" and "improper purpose" clauses of Rule 11 either in the wording of Rule 11 or in the lower courts.

III. *Hartmarx* Establishes That The Voluntary Withdrawal Of The Offending Pleading Does Not Divest The District Court Of Jurisdiction To Impose Rule 11 Sanctions

Finally, Schwartz argues this case "presents an issue nearly identical to one of the questions presented in *Cooter & Gell, supra*, namely whether the district courts have jurisdiction to impose Rule 11 sanctions if the issue is raised *after* the paper in question has been voluntarily withdrawn by the signing attorney." Petition at 15 (emphasis in original). Petitioner argues that Judge Hungate did not have the authority to impose Rule 11 sanctions after Mr. Mosely's appearance had been voluntarily withdrawn.

In *Cooter & Gell v. Hartmarx*, this Court resolved the jurisdictional issue adversely to Schwartz. It found that the " 'violation of Rule 11 is complete when the paper is filed.' " 58 U.S.L.W. at 4766 (quoting *Szabo Food Service, Inc. v. Canteen Corp.*, 823 F.2d 1073, 1077 (7th Cir. 1987)). The Court concluded that a federal court may consider collateral issues such as Rule 11 sanctions after an action is no longer pending. It ex-

pressly rejected the Second Circuit's *Johnson Chemical Co., Inc. v. Home Care Products, Inc.*, 823 F.2d 28, 31 (2d Cir. 1987), the only case Schwartz musters in support of his position. 58 U.S.L.W. at 4766. If voluntary dismissal of the entire action does not divest the trial court of its jurisdiction to impose Rule 11 sanctions, mere withdrawal of the offending pleading certainly cannot.

CONCLUSION

The true gravamen of Schwartz's Petition is that under all the facts and circumstances of this case, it was unfair to impose the relatively nominal Rule 11 sanction involved here. But the unique facts and circumstances inherent in each Rule 11 determination are precisely why this Court has emphasized the deference to be afforded district courts. "The district court is best acquainted with the local bar's litigation practices and thus best situated to determine when a sanction is warranted to serve Rule 11's goal of specific and general deterrence." *Hartmarx,* 58 U.S.L.W. at 4768. The sanction in this case is reasonably tailored to the violation, and provides an incentive to members of the bar to " 'stop, think and investigate more carefully before serving and filing papers' "[1] such as the motion Schwartz filed below. Any issue of general interest raised by Schwartz's Petition has been resolved by *Hartmarx,* and what remains is a question of the appropriateness of the sanction under the peculiar circumstances of this case—a question clearly inappropriate for review by this Court. The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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[1] *Hartmarx,* 58 U.S.L.W. at 4767 (quoting Letter of Judge Walter R. Mansfield, Chairman, Advisory Committee on Civil Rules, *reprinted in* 97 F.R.D. 190, 192 (1983)).